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IN THE COURT OF APPEALS OF INDIANA

PAULA HAMILTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0608-CR-624
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Commissioner
Cause No. 49G14-0509-FD-152261

February 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Paula Hamilton appeals her conviction for Possession of Cocaine,[1] a class D felony. Hamilton's sole argument on appeal is that the cocaine seized from her person was improperly admitted into evidence because the police had no reasonable grounds to approach and detain her. Hence, Hamilton argues that the cocaine found by the police as the result of further investigation should have been excluded from the evidence at trial. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 6, 2005, Indianapolis Police Officer David Gard went to the Indy East Motel to check for registrants with open arrest warrants. The motel is located in a high-crime area, and the owners typically cooperate with various law enforcement agencies when their officers patrol the motel.

At some point, Officer Gard learned that an arrest warrant had been issued for Pamela Jones, one of the motel's registrants. Although Jones was not in the motel at the time, Officer Gard waited for her near the business office. A short time later, Hamilton pulled her vehicle into the motel's parking lot. Officer Gard observed that a woman fitting Jones's description on the arrest warrant was a passenger in Hamilton's vehicle. As a result, Officer Gard approached the vehicle and asked the women for their room number. After Jones gave a room number, Officer Gard went to the motel office and learned that the number Jones had given him was incorrect. As Officer Gard left the office, he noticed the two women walking into the motel's main entrance.

[1] Ind. Code § 35-48-4-6.

Jones then repeatedly lied to Officer Gard about her identity. During this conversation, Officer Gard noticed that both Jones and Hamilton appeared to be nervous, and they did not maintain eye contact with him. Moreover, Hamilton began to shake and she clenched her teeth when speaking to Officer Gard.

After confirming Jones's identity, Officer Gard arrested her on the outstanding warrant. Officer Gard asked Hamilton if she possessed any contraband, and Hamilton responded that she did not. As another officer started to search Hamilton's vehicle, Officer Gard stood with Jones. Jones eventually told Officer Gard that Hamilton had cocaine on her person. After Hamilton clenched her teeth and again denied having any drugs, Officer Gard told her to "spit it out in my hand." Tr. p. 13. Hamilton then spit a substance into Officer Gard's hand that subsequently tested positive for cocaine.

After being charged with the above offense, Hamilton filed a motion to suppress, claiming that Officer Gard had not observed Hamilton commit a crime and did not have "reasonable grounds" to believe that Hamilton had committed an offense when she was detained and searched. Appellant's App. p. 22. As a result, Hamilton contended that the cocaine should not be admitted into evidence at trial because the "seizure and search were made without a valid arrest warrant and were not reasonable under Article 1, Section XI of the Indiana Constitution or the Fourth Amendment to the U.S. Constitution." Id. Although a hearing on Hamilton's motion was held, the trial court did not make a ruling.

When Hamilton's bench trial commenced on June 28, 2006, she renewed her motion to suppress and objected to the admission of Officer Gard's testimony concerning Hamilton's act of spitting out the cocaine into his hand and to any evidence obtained

thereafter for the reasons set forth in her original motion. At the close of the evidence, the trial court overruled the motion to suppress and found Hamilton guilty as charged. She now appeals, arguing that the detention and subsequent search violated her rights under the Fourth Amendment to the United States Constitution.[2]

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that because this is not an appeal from an interlocutory order denying a motion to suppress, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Bentley v. State, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006), trans. denied. We review a trial court's determination as to the admissibility of evidence for an abuse of discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances. Smith v. State, 754 N.E.2d 502, 504 (Ind. 2001).

Our standard of review with regard to rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002). We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied. However, we must also consider the uncontested evidence favorable to the defendant. Id.

[2] Hamilton makes no separate challenge to the detention or search pursuant to Article I, Section 11 of the Indiana Constitution.

II. Admissibility of the Cocaine

In addressing Hamilton's argument that the cocaine should not have been admitted into evidence, we note that not all encounters between the police and citizens involve a "seizure" of the citizen. Bentley v. State, 779 N.E.2d 70, 73 (Ind. Ct. App. 2002). Under the Fourth Amendment, a person is "seized" only when, by means of physical force or a show of authority, his or her freedom of movement is restrained. U.S. v. Mendenhall, 446 U.S. 544, 553-54 (1980). Put another way, a person is "seized" within the meaning of the Fourth Amendment only if, in view of all of the surrounding circumstances, a reasonable person would have believed that he or she was not free to leave. Id.

This court has explained that there are three levels of police investigation, two that implicate the Fourth Amendment to the United States Constitution and one that does not. In Overstreet v. State, 724 N.E.2d 661, 664 (Ind. Ct. App. 2000), we observed that:

> First, the Fourth Amendment requires that an arrest or detention for more than a short period be justified by probable cause. Woods v. State, 547 N.E.2d 772, 778 (Ind.1989). Probable cause to arrest exists where the facts and circumstances within the knowledge of the officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. Brinegar v. United States, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). Second, it is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot." Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be justified by mere reasonable suspicion. Woods, 547 N.E.2d at 778. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop. In this type of "consensual encounter" no Fourth Amendment interest is implicated.

In addition to the above, the United States Supreme Court has recognized that Fourth Amendment protections are not implicated in some circumstances because the purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry. Rather, its purpose is to prevent arbitrary and oppressive interference by government officials with the individual's privacy and personal security rights. Mendenhall, 446 U.S. at 553-54.

Examples of police conduct that could lead a person to believe that he or she is not at liberty to terminate the encounter with the police include: (1) the use of sirens or police emergency lights; (2) operation of a police vehicle in an aggressive manner; (3) a command that the person halt; (4) police attempts to control the person's direction or speed; (5) the threatening presence of several officers; (6) the display of weapons by the police; (7) some physical touching of the person by the police; or (8) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. State v. Lefevers, 844 N.E.2d 508, 513 (Ind. Ct. App. 2006), trans. denied. Absent this type of evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person. Id.

In this case, there is no showing that Officer Gard's initial approach and encounter with Hamilton would have made a reasonable person feel as though she were not free to walk away. When Officer Gard approached Hamilton's vehicle and asked her and Jones about their registration at the hotel, he was alone and did not display a weapon. Tr. p. 11. Officer Gard did not touch Hamilton, and there is no evidence that he used a tone or language when he spoke suggesting that Hamilton felt compelled to answer his questions.

Id. See Lefevers, 844 N.E.2d at 513 (no seizure occurred when the police officer merely approached the defendant and started talking to her).

Also, when Officer Gard entered the motel office, it is apparent that Hamilton believed she was free to leave because she exited her vehicle and proceeded to the motel entrance. Tr. p. 11. When Officer Gard approached Hamilton the second time, the evidence again did not demonstrate that Hamilton was required to remain at the scene to answer his questions. And there was no indication that Officer Gard told Hamilton that it would be in her "best interest" to cooperate or any words to that effect. Thus, it was established that Officer Gard did not "seize" Hamilton at any time before Jones informed him that Hamilton possessed cocaine. Therefore, Fourth Amendment concerns were not implicated in these circumstances, and the trial court did not err in admitting the cocaine into evidence that Officer Gard subsequently recovered from Hamilton.[3]

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.

[3] Hamilton makes no specific argument on appeal challenging Officer Gard's probable cause to search after the initial approach and detention. Even so, the totality of the circumstances including Hamilton's nervousness, manner of speech, and Jones's report to Officer Gard that Hamilton was in possession of cocaine, provided sufficient reasonable suspicion of criminal activity by Hamilton and warranted any possible seizure of her by Officer Gard. See Kenworthy v. State, 738 N.E.2d 329, 332 (Ind. Ct. App. 2000) (holding that a police officer's detection of alcohol on an automobile driver's breath warranted continued investigation and detention after the original justification for a traffic stop no longer existed).